

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
)	Docket No. 13-0318
Annual formula rate update and revenue)	
requirement reconciliation under)	
Section 16-108.5 of the Public Utilities Act)	

BRIEF ON EXCEPTIONS AND EXCEPTIONS
OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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NOW COME the People of the State of Illinois (“the People”), by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.830 of the Illinois Commerce Commission’s (“the Commission”) rules, 83 Ill.Admin.Code Part 200.830, and in accordance with the schedule established in this docket, hereby file their Brief on Exceptions and Exceptions to the Proposed Order (“PO”) issued by the Administrative Law Judges (ALJs) in the above-captioned docket on November 15, 2013, which will establish formula rates for Commonwealth Edison Company (“ComEd” or “the Company”).

I. Introduction

The Proposed Order recommends adjustments that would reduce the Company’s proposed revenue requirement by approximately \$1.95 million. The additional adjustments presented in the People’s Brief on Exceptions will reduce the amount borne by ratepayers by, approximately, an additional \$8.41 million, above and beyond the adjustments in the Proposed Order.

On several important accounting issues affecting customer rates, the Proposed Order simply got it wrong. Specifically, the Proposed Order’s conclusion on the People’s proposed

adjustment to accumulated deferred income taxes (“ADIT”) on Vacation Pay mechanically reaches a series of conclusions that fails to address the threshold issue raised by the People: should capitalized vacation pay be included in rate base? The answer, as explained below, is no.

In addition, the Proposed Order rejects the People’s well-supported adjustment to remove expenses related to Exelon stock price discounts and related income taxes associated with the ComEd Employee Stock Purchase Plan (“ESPP”). The People presented strong evidence that, like the disallowed expenses at issue in Docket No. 11-0721, the ESPP discount expenses should be disallowed because the Plan is a non-recoverable stock-based compensation arrangement wherein the value of benefits received by employees is directly tied to the earnings and financial performance of Exelon, as reflected in stock prices, rather than achievement of the statutory criteria for allowable incentive compensation expense referenced in Section 16-108.5(c)(4)(A) of the Act. The Proposed Order also deprives ratepayers of the financial benefits associated with income tax deductions where it ignores the “one-time,” non-recurring nature of some of the costs that also pre-date formula ratemaking. Finally, the Proposed Order further burdens ratepayers by failing to acknowledge that, by using the Company’s own tax deduction information, the People have shown that ComEd’s treatment of stock-based compensation programs is systematically one-sided to the disadvantage of ratepayers.

In addition, the Commission, if it decides to not follow the Proposed Order’s conclusions on General & Intangible Plant, should assign 100 percent of the Late Payment Charges to ComEd’s jurisdictional delivery services revenue requirement, ceasing the Allocation to Transmission in the Company’s proposed revenue requirement. The Proposed Order fails to properly address the People’s argument on this issue.

Finally, the Proposed Order reserves judgment on three critical issues related to the calculation of the current reconciliation revenue requirement and how reconciliation amounts in future years will be computed. ComEd's Revised Formula Rate Tariff approved by the Commission on June 5, 2013 in Docket No. 13-0586 included formula rate provisions that were overbroad, and improperly changed provisions of the formula that P.A. 98-0015 did not address or authorize. Specifically, the Company's calculation of the ROE collar adjustment and grossing up of the WACC interest rate on the reconciliation under-recovery are not authorized by 98-0015 or by other EIMA provisions. In addition, the Company's failure to recognize the ADIT on the reconciliation under-recovery prior to application of the WACC interest is contrary to fundamental and well-established Article IX ratemaking principles. If permitted to remain in place, the unauthorized formula rate tariff changes approved in the Revised Formula Rate Tariff, as well as that tariff's failure to determine the "net of tax" reconciliation balance, would unjustly enrich ComEd in the pending and future annual reconciliation proceedings under sections 16-108.5(d) of the Act.

These issues are being addressed in Docket No. 13-0553, the Commission's investigation into ComEd's Revised Formula Rate Tariff approved in Docket No. 13-0386. Without the modifications to the Revised Formula Rate Tariff recommended by the People both in this docket and in Docket No. 13-0553, ComEd will continue to collect revenues that do not reflect the Company's actual costs. The result would be customer rates that are not just and reasonable under sections 9-101 and 16-108.5(c) of the PUA and inconsistent with the goals of EIMA to base rate on "actual costs." The Proposed Order in this docket acknowledges these issues and indicates that they will be resolved in Docket No. 13-0553. The Commission should adopt the changes to the Proposed Order in that docket recommended by the People, and incorporate those

rate changes in the final revenue requirement established in this docket, as discussed in the People's Brief on Exceptions and Exceptions filed on November 18, 2013.

II. Exception No. 1: The Proposed Order Misunderstands the People's Adjustment to Accumulated Deferred Income Taxes on Vacation Pay

The Proposed Order mechanically reaches a series of conclusions on the issue of the Accumulated Deferred Income Taxes (ADIT) on Vacation Pay. In doing so, it fails to address the threshold issue raised by the People: *should the capitalized vacation pay be included in rate base?* The answer, of course, is no. As previously explained by the People, the Company's operating reserves represent accruals, including accrued vacation pay, that have yet to be disbursed as cash. AG IB at 13; AG Ex. 4.0 at 4. These operating reserves are deducted from plant in service when determining rate base. AG IB at 13; AG Ex. 4.0 at 4-5.

When calculating the expenses related to vacation pay, the Company charges a portion to expenses and charges another portion, which represents the amount to be added to plant accounts, to a deferred debit account. AG IB at 13-14; AG Ex. 2.0 at 5; 4.0 at 4-5. This second portion, the deferred debit, is added by the Company to rate base because the costs have not been recovered from ratepayers. AG IB at 13; AG Ex. 2.0 at 4; 4.0 at 4. It is this second portion that is critical to the People's analysis – and short-shrifted by the Proposed Order – because the People demonstrated that the Company improperly records a portion of vacation pay to be capitalized to plant accounts as a deferred debit as a separate addition to its rate base. AG IB at 13-14; AG Ex. 2.0 at 3-4; 4.0 at 4-5.

Undisputed evidence in the record and previously noted by the People in their Briefs is that the *capitalized* vacation pay does not represent actual investor-supplied funds. This is a critical piece to the puzzle that the Proposed Order simply ignores. As AG witness Mr. Effron testified:

this item does not require investor supplied funds and should not be explicitly included in the Company's rate base. Rather, the associated debit balance should be netted against the accrued vacation pay that is included in operating reserves.

AG Ex. 2.0 at 5; AG IB at 14. It naturally follows, as described in great deal in the People's Briefs, that this portion of vacation pay should not be added to rate base to begin with. The Proposed Order, however, pays no attention to this important distinction and simply accepts the Company's position. It is important to note that the People are *not* proposing to recognize any "additional deferred tax liability" related to capitalized vacation pay – as is concluded by the Proposed Order. In its simplest form, the People are proposing that the ADIT be limited to the accrued vacation pay that should be taken into account in the determination of rate base.

The People, in their testimony and Briefs, broke down this adjustment to its essence and explained that when the capitalized vacation pay is excluded from rate base, as it should be, it is *irrelevant* whether there are any related deferred taxes or not. AG IB at 15-16. The underlying calculations and the justification for these calculations were explained in greater detail in the People's Briefs and in Mr. Effron's testimony. See AG IB at 14-16; AG Ex. 4.0 at 2-4. As noted by the People in their Reply Brief, just because the investors supply the capital for a portion of this deferred debit (see ComEd IB at 25) does not mean that ratepayers should be on the hook for reimbursing the investors. AG RB at 8-9.

Finally, the Proposed Order concludes that, as it found in Docket 12-0321, the Company's calculation is correct. PO at 15. Although the Order in 12-0321 reached the same conclusion as the Proposed Order does here, it is simply a misstatement of the Order in 12-0321, which sought to explore this issue further. Docket No. 12-0321, Final Order (December 18, 2012) at 17. The People, for their part, have presented thorough and thoughtful discussion on this issue, in line with the Commission's directive in 12-0321. The Proposed Order, unfortunately,

misses the point of the People's discussion and provides a series of perfunctory conclusions on the issue. Based on the above, as well as the arguments presented in their briefs on this issue, the People urge the Commission to adopt their position and remove the capitalized portion of vacation pay from rate base.

III. Exception No. 1 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 15 should be modified as follows:

Commission Analysis and Conclusion

The Commission recognizes that EIMA's ratemaking approach is based on the use of FERC Form 1 data. ComEd's ADIT calculation, including its calculation of its deferred tax asset on the operating reserve liability on its accrued vacation pay, is based on this data. As noted by the People, this item does not require investor supplied funds and should not be explicitly included in the Company's rate base. The Commission agrees with the People that the ADIT should be limited to the accrued vacation pay that is taken into account in the determination of rate base. ~~The Commission agrees with Staff and ComEd that the proposal to include ADIT related to capitalized accrued vacation pay in rate base should be rejected as there is no additional deferred tax liability to recognize. The tax impact of the capitalized accrued vacation pay is recognized on the Company's books as a deferred tax asset that reduces ADIT and increases rate base. The Commission finds, as we did in Docket No.12-0321, that~~ the People's ComEd's calculation reaches the correct result.

IV. Exception No. 2: The Proposed Order Disregards the People’s Proposal on Employee Stock Purchase Plan

The People presented a well-reasoned adjustment to remove expenses incurred for Exelon stock price discounts and related income taxes associated with the ComEd Employee Stock Purchase Plan (“ESPP”). AG IB at 23. In support of their position on the discount expenses, the People presented strong evidence that, like the disallowed expenses at issue in Docket No. 11-0721, the ESPP discount expenses should be disallowed because the Plan is a non-recoverable stock-based compensation arrangement. AG IB at 24, 26, 27. As to the income tax expenses, the People demonstrated that charging ratepayers for income taxes arising from changes in the value of Exelon stock within the ESPP is clearly inconsistent with the intent of section 108.5(c)(4)(A) of the Act. AG IB at 28; AG RB at 14. The Proposed Order, unfortunately, methodically accepts the Company’s position with little more than a series of conclusory statements.

a. Stock Price Discounts

The conclusions reached by the Proposed Order related to the stock price discount issue are neither supported by record evidence or law. Specifically, the Proposed Order concludes that “ESPP is a fringe benefit and not an incentive based program based on job performance” primarily because it is not given as a reward and employees must purchase the stock with their own funds. PO at 54. The People, however, raised several important points refuting this conclusion. Notably, the People demonstrated that the Plan directly ties the value of employee benefits to the earnings and financial performance of Exelon, rather than achievement of the statutory criteria referenced by the Commission in its Order in Docket No. 11-0721. AG IB at 26; AG RB at 13-14; AG Ex. 1.0 at 28. Briefly stated, the People presented evidence that the

functioning of the ESPP increases ComEd's A&G expenses and impacts the delivery service revenue requirement in an amount associated with the fair value of the option on the purchased stock. AG IB at 25-26; AG Ex. 3.0 at 29. At the same time, however, the plan provides a financial incentive for participants in the ESPP to maximize the earnings and financial performance of Exelon. See AG Ex. 3.1. The Proposed Order, however, ignores these important points, as well as the testimony of AG witness Mr. Brosch who testified that the *functioning* of the ESPP demonstrates that it is not simply a fringe benefit plan. AG IB at 25-26; AG RB at 14; AG Ex. 3.0 at 29.

The Proposed Order also concludes that "ESPP is also not given as a reward because employees must purchase stock with their own funds." PO at 54. This conclusion misses the point of the People's argument completely. The People demonstrated that *ComEd* subsidizes the purchase of *Exelon* stock by offering a discounted share price, exposing ratepayers to significant expenses arising from the ESPP share price discount. AG IB at 26. Therefore, it makes little difference that the employees use their own funds to purchase the stock at a discount. The point is that ComEd is subsidizing the cost of stock at ratepayers' expense. The Proposed Order, however, ignores this important distinction, particularly where it concludes that "the fact that ESPP is not fully funded by employees provides no basis to disallow these expenses." To the contrary, this subsidization exposes ratepayers to significant program expenses arising from the ESPP share price discount and it is only this discount that is proposed for disallowance. AG IB at 26.

The Proposed Order confusingly concludes that "[t]here is no evidence in the record that any aspect of ESPP is dependent on the achievement of metrics relating to net income or an affiliate's earnings per share for which recovery under the Section is prohibited." PO at 54-55.

As described in greater detail in the People's briefs and in testimony, Mr. Brosch analyzed the ESPP prospectus and determined that the stated purpose of the ESPP "is to provide an added incentive for eligible employees ... to promote Exelon's best interests." AG IB at 25.

(Emphasis added.) In addition, as discussed further in the Income Tax section related to the ESPP, the People presented evidence that the Company acknowledges that expense impacts arising from this plan are directly related to the "intrinsic value" of Exelon's stock, compared to the "cash received from the sale of stock to employees under the plan." *See* AG Ex. 1.8, ComEd's response to AG 2.09, part b.

As the People demonstrated, the functioning of the discount plan both increases ComEd's expenses and impacts the delivery service revenue requirement in an amount associated with the fair value of the option on the purchased stock. AG Ex. 3.0 at 29. At the same time, however, the plan provides a financial incentive for participants in the ESPP to maximize earnings and financial performance of ComEd and Exelon, even if this is done at ratepayers expense. The Proposed Order also pays no attention to the critical point that there is no observable link between Exelon share prices and the quality of delivery services being provided in Illinois. AG IB at 27; AG Ex. 3.0 at 26. Therefore, the Commission should reject ComEd's proposed expenses associated with the ESPP.

As noted above, the Proposed Order wrongly concludes that the ESPP is not incentive compensation. PO at 54-55. As the People have shown, the plan is, in fact, governed by Section 16-108.5(c)(4)(A), because it creates expenses for the regulated utility that benefit the parent company. The ESPP expenses, therefore, should be disallowed. The Proposed Order also misunderstands the impacts that this plan has on ratepayers and, for these reasons, as well as

those presented in their briefs, the People urge the Commission to reject the Company's proposed recovery for ESPP-related expenses.

b. Income Tax Issue

As noted in the People's briefs, participating employees will, at some point, dispose of their shares purchased under the ESPP. AG IB at 26; AG RB at 15. When they do so, these transactions create income tax expense impacts directly tied to the "intrinsic value" of Exelon's stock. *Id.* It is unreasonable to burden ratepayers with these incremental income tax expenses.¹ To offset this unreasonable outcome, the People recommend disallowing \$1.8 million of income tax expenses associated with the ESPP. AG IB at 29; AG Ex. 1.3, page 3.

The Proposed Order ignores the very basis upon which the People's adjustment is rooted. AG witness Mr. Brosch found an irregular *one-time* charge in ComEd's bookkeeping at the expense of ratepayers. AG IB at 29-30. The fact that a portion of the asserted test-year cost for ESPP represents a "one-time adjustment" indicates that these prior period adjustments to income taxes are clearly unusual and non-recurring, pre-dating the inception of formula ratemaking for ComEd and should be excluded from cost recovery in formula rates in 2012. AG IB at 29-30; AG Ex. 1.0 at 29. The Proposed Order, unfortunately, pays no attention to this argument.

The Proposed Order continues to misunderstand the People's adjustment where, without support, it concludes that the People "improperly conflate[d] the ESPP-related taxes with tax deductions that Exelon takes regarding dividends paid on shares of Exelon stock held in employee 401(k) accounts." PO at 55. Quite to the contrary, the People used the Company's own tax deduction information to support its analysis and to show that ComEd's treatment of stock-based compensation programs is systematically one-sided to the disadvantage of

¹ See AG Exhibit 1.8 and AG Exhibit 1.0 at 28-29 for specific details regarding the income tax treatment of the ESPP.

ratepayers. Specifically, the People demonstrated that Exelon, ComEd's parent company, takes an annual income tax deduction of about \$13-15 million per year. AG IB at 29; AG Ex. 3.0 at 28. However, because the parent submits a consolidated tax filing (Tr. at 246, AG Cross Ex. 6), the related tax savings from this income tax deduction arising from employee ownership of ComEd stock do not get allocated to ComEd or passed on to its ratepayers. Tr. at 90; AG Cross Ex. 3. Therefore, ratepayers are not only burdened with paying for the costs of discounting shares issued under the ESPP and for income tax expenses arising from the ESPP, but they receive no benefit for the large and recurring income tax deductions taken by the parent entity, on the tax return where dividends paid by Exelon on shares held by employees can properly be deducted. AG IB at 29-30. The Proposed Order concludes that no adjustment is needed to eliminate this income tax expenses associated with stock-based compensation. This, unfortunately, ignores the valuable income tax deduction benefits realized by Exelon on the consolidated group tax return based upon dividends paid on Exelon common stock held in employee benefit accounts, which have totaled \$15.4 million in 2009, \$15.0 million in 2010 and \$13.6 million in 2011. AG IB at 29.

According to the Company's response to data request AG 6.03, part (c), "...only the corporation paying the dividend is entitled to a deduction. As such, none of Exelon's underlying business units may claim or are entitled to share in Exelon Corporation's tax deduction." This means that when employee ownership of Exelon shares creates an income tax benefit, the Company's position is that the resulting tax savings belongs to Exelon alone and need not be

shared with ratepayers in Illinois. On the other hand, when the opposite occurs, ComEd proposes that the ESPP income tax costs be treated as fully recoverable from Illinois ratepayers.²

The Proposed Order also concludes that “the ESPP tax expenses related to years prior to 2012 are appropriately included in ComEd’s 2012 rate year because they have not been reflected in prior revenue requirements and ComEd has not accounted for or recovered them.” PO at 55. The People reiterate that whether ComEd has recovered these expenses or not misses the point completely. ESPP expenses, including the associated tax expenses, should be excluded from the determination of the Company’s formula rates. See AG IB at 24-30. The costs of employee benefit plans that reward earnings and financial results and are unrelated to the specific statutory criteria included in section 108.5(c)(4)(A) for permissible incentive compensation expenses should be excluded. AG IB at 29. The income tax expense impacts driven by Exelon stock price valuations should not be included within the determination of formula rates, particularly where such costs arise from one-time adjustments for multiple prior years that arose out of an IRS audit. AG IB at 30. As the People previously noted, recovery of these expenses is inherently unfair to ratepayers, who subsidize the ESPP program but receive no financial benefit when Exelon takes a deduction and achieves tax savings. AG IB at 29-30.

Finally, the Proposed Order adopts Staff’s conclusions on the tax income expenses. In response, the People simply note that while Mr. Brosch performed extensive analysis of the issue, including several reviews of Company-provided information, Staff acknowledged that it performed no discovery and Staff witness Mr. Bridal provided no workpapers or evidence of analysis to the ESPP or its costs. AG Cross Ex. 6; Tr. at 245.

² AG Exhibit 3.4 is a copy of the Company’s response to data request AG 6.03, which provides more information on this clearly inequitable proposed treatment of the income tax benefits arising from employee ownership of Exelon common stock.

In light of the above and the arguments presented in the People's briefs, the People urge the Commission to adopt AG witness Brosch's well-reasoned and supported adjustment that removes both the administrative and general expenses and the unusually large income tax expenses associated with Exelon's Employee Stock Purchase Plan.

V. Exception No. 2 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 54-55 should be modified as follows:

Commission Analysis and Conclusion:

The Commission agrees with ~~the People Staff and ComEd~~ that both the A&G expenses and the income tax expenses arising from ComEd's ESPP ~~are recoverable~~ should be disallowed in their entirety. Specifically, the Commission finds that ESPP is ~~a fringe benefit and not an incentive based program that based on job performance. ESPP is also not given as a reward because employees must purchase stock with their own funds. The AG and CCI's attempt to compare it to ComEd's Key Manager restricted stock program is unpersuasive. Further, because ESPP is not incentive compensation, it is not governed by Section 16-108.5(c)(4)(A) which requires disallowance when a plan is based on net income or an affiliate's earnings per share. and the criteria therein does not apply. There is no evidence in the record that any aspect of ESPP is dependent on the achievement of metrics relating to net income or an affiliate's earnings per share for which recovery under the Section is prohibited. Moreover, the fact that ESPP is not fully funded by employees provides no basis to disallow these expenses.~~ The Commission agrees with the People that ComEd's ESPP is a stock-based compensation agreement where the value of benefits received by employees is directly ties to the earnings and financial performance of Exelon, as reflected in stock prices, rather than the achievement of the statutory criteria for allowable incentive compensation expense referenced in Section 16-

108.5(c)(4)(a) to the Act. This conclusion is consistent with our order in Docket No. 11-0721, which concluded that stock-based incentive compensation arrangements should not be included in ComEd's revenue requirement. The functioning of the discount plan both increases ComEd's expenses and impacts the delivery service revenue requirement in an amount associated with the fair value of the option on the purchased stock. At the same time, however, the plan provides a financial incentive for participants in the ESPP to maximize earnings and the financial performance of ComEd and Exelon. Such expenses should be borne by shareholders and not ratepayers. Finally, there is no observable link between Exelon share prices and the quality of delivery services being provided in Illinois.

~~The record shows that income taxes associated with ESPP are associated with the value of the benefit provided. Here, that benefit is the discount received. The AG and CCI however, improperly conflate the ESPP-related taxes with tax deductions that Exelon takes regarding dividends paid on shares of Exelon stock held in employee 401(k) accounts. The record shows, however, that the ESPP and employee 401(k) accounts are not related and the derivative tax issues presented by them are also unrelated. The record shows that Staff has concluded that the A&G and tax aspects of the proposed disallowance are incorrect. The Commission also finds that the ESPP tax expenses related to years prior to 2012 are appropriately included in ComEd's 2012 rate year because they have not been reflected in prior revenue requirements and ComEd has not accounted for or recovered them. The Commission therefore declines to adopt the proposed disallowances relating to ComEd's ESPP.~~

As to the income tax related expenses, the Commission agrees with the People's analysis that the income tax expense impacts driven by Exelon stock price valuations should not be included within the

determination of formula rates, particularly where such costs arise from once-off adjustments for multiple prior years that arose out of an IRS audit. The Commission also agrees with the People that recovery of these expenses is inherently unfair to ratepayers due to Exelon's consolidated tax program that requires ratepayers to subsidize the ESPP stock purchase program, which benefits Exelon, but refuses to share the savings that result when Exelon takes a related tax deduction. Therefore, the Commission declines to allow recovery for the tax related expenses of ComEd's ESPP.

VI. Exception No. 3: If the Commission Does Not Accept the Proposed Order's Conclusion on G&I Plant, the Commission Should Adopt the People's Proposal on Late Payment Charge Allocation.

The People urge the Commission to accept the Proposed Order's conclusion on the W&S allocator related to G&I Plant. PO at 7. However, in the event that the Commission does not accept the Proposed Order's conclusion on the G&I Plant, the People then raise the argument that Late Payment Charges be 100 percent assigned to the jurisdictional delivery services revenue requirement, ceasing the Allocation to Transmission in the Company's proposed revenue requirement.

The People stand by their well-reasoned and supported proposal to credit 100 percent of the Late Payment Charges ("LPC") revenues paid in 2012 by ComEd's delivery service (DS) customers when determining the Company's formula-based Net Revenue Requirement in the event that the Commission adopts ComEd's proposed change to adopt the FERC method of jurisdictional allocation of its G&I Plant. AG Ex. 1.3, page 1; AG IB at 58-62. The People acknowledge that the Company has historically allocated a portion of LPC revenues to the FERC jurisdiction. AG IB at 59. However, the People recommend ceasing the Company's

inappropriate allocation of these revenues, directly reducing the formula revenue requirement for 2012 by approximately \$2.526 million. AG IB at 59; AG Ex. 1.0 at 9.

The Proposed Order concludes, without additional support, that the People's proposal should be rejected because they have "not provided sufficient additional evidence in this proceeding to warrant the deviation from past Commission practice." PO at 67. Contrary to the Proposed Order's interpretation of the record evidence, the People provided ample evidence in the record to support their proposal. In their Briefs, the People provided a thorough breakdown of the reasoning behind their proposal and walked through the calculation of the proposal. AG IB at 58-61; AG RB at 41-42. The People cited to several AG exhibits supporting their proposal, including the testimony of AG witness Mr. Brosch (AG Ex. 1.0 at 9-11); calculations supporting the proposal (AG Ex. 1.3, page 1); and a data request response from the Company describing their position (AG Ex. 1.4). The People also noted that ComEd does not rely upon any FERC order or regulation that requires any allocation of these revenues to the FERC jurisdiction. AG IB at 61. In addition, the People observed that the only other Illinois electric utility subject to formula rates does not follow ComEd's proposed allocation of LPC revenues (AG IB at 61, citing to Docket No. 12-0001, Ameren Exhibit 1.3R, page 29). The substantial evidence in the record supports Commission adoption of the People's position on Late Payment Charges, which will credit Illinois customers with 100% of the late payment charge revenues, resulting in a \$2,526,000 increase in ComEd's jurisdictional revenues. AG IB at 62.

VII. Exception No. 3 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 67 should be modified as follows:

Commission Analysis and Conclusion

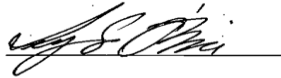
In light of the Commission's findings adopting the Company's proposed FERC Method of allocating G&I Plant, the Commission agrees with the Company and Staff and approves ComEd's approves the People's proposed allocation of late payment revenues related to transmission. The People's proposal will credit 100 percent of the Late Payment Charges ("LPC") revenues paid in 2012 by ComEd's delivery service (DS) customers when determining the Company's formula-based Net Revenue Requirement, thereby reducing the formula revenue requirement for 2012 by approximately \$2.526 million. ~~The Company's method credits customers with these revenues through the transmission rate, and has been adopted in ComEd's last five "Article IX" and formula rate cases.~~ Although in previous dockets, the Commission previously rejected the AG's proposal to allocate LPCs 100% to delivery service, and the AG has ~~not~~ provided sufficient additional evidence in this proceeding to warrant the deviation from past Commission practice.

VIII. CONCLUSION

For all of the reasons stated above and in their Initial and Reply Briefs, the People of the State of Illinois urge the Commission to adopt a Final Order consistent with the recommendations in this Brief.

Respectfully submitted,

The People of the State of Illinois
LISA MADIGAN, Attorney General

A handwritten signature in black ink, appearing to read 'KLusson', is written over a horizontal line.

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